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TRA DOCKET ROOM

Kings Chapel Subdivision
John Powell
Kings Chapel Capacity, LLC
1413 Plymouth Dr.
Brentwood, TN 37027

January 14, 2005

Chairman Pat Miller
Attn: Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

DOCKET NO.

05-00016

RE: Formal Complaint by King's Chapel Capacity, LLC against Tennessee Wastewater Services regarding Abuse of its CCN.

Dear Chairman Miller:

King's Chapel Capacity, LLC ("KCC") hereby files this formal complaint against Tennessee Wastewater Services ("TWS") regarding abuse of the authority and privileges afforded them under the CCN granted by the Tennessee Regulatory Authority ("TRA").

Specifically, KCC states that TWS has abused the rights granted to it under the CCN by the TRA. The following constitute a summary of those demands but are not intended to be a complete list of all wrongdoing:

1. In order for KCC or a customer to obtain wastewater service from TWS, TWS demanded that KCC use TWS's affiliates for all wastewater construction and materials at a significant markup over cost.¹ If KCC was unwilling to use TWS affiliates for construction, then TWS would refuse to provide utility service and maintenance to KCC and represented that no one else could provide this service since TWS had an approved exclusive CCN from the TRA for this area. TWS made it clear that unless all its demands were met no service would be afforded and no one else could provide it.
2. Additionally, before KCC could obtain wastewater service from TWS, TWS also demanded that KCC contract to pay On Site Capacity Development Co a TWS Affiliate "utility inspection fees" of approximately \$400,000. These utility inspection fees were to be paid to the TWS affiliate, the very same affiliate who constructed the system. All construction and inspection work was required to be completed by licensed contractors under the laws of the

¹ In addition, KCC has attached affidavits from the appropriate state agencies that these affiliates lacked the necessary engineering and contractors licenses required to construct a wastewater system

State of Tennessee. Notwithstanding this fact, neither TWS nor its affiliate Onsite Capacity Development Company were licensed contractors.

3. TWS additionally demanded that (KCC) pledge assets and post all local bonds and pay the bonding costs associated with this process. This is clearly and obligation of TWS. TWS then separately charges rate payers for this same cost under it's tariff. This essentially "doubles up" the bonding costs to the rate payer by first requiring KCC or the developer to pledge, post, and pay for bond and then requiring the end user rate payer to pay for this bond in their monthly rates. However, the bond cost was only paid once and then not by TWS but by KCC.
4. Finally, KCC states that TWS' abuse of its asserted monopoly power has been systematic and has occurred over a long period of time. Further, this pattern of abuse has already been applied to other CCN's approved by the TRA for TWS resulting in significant overcharges to TWS customers through higher lot prices.

KCC would point out that the Uniform System of Accounts adopted by the TRA for wastewater utilities requires that all entries to plant-in-service be made at cost (without markup) and that TWS has circumvented these rules through transactions with its wholly owned affiliates. In addition, TWS has mandated the use of their affiliates before service would be provided, resulting in an indirect tariff rate for construction costs that has not been approved by the TRA. Also, since these mandated construction costs vary by location, they result in discriminatory rates in violation of TRA rules. Finally, KCC would point out that none of the construction, bonding or inspection revenues received by TWS are reported on TWS financial statements to the TRA, thereby resulting in evasion of TRA Inspection Fees and Tennessee Gross Receipts taxes.

After KCC discovered this pattern of abuse, it sought to apply for its own CCN in Docket 04-00335. However, the disputes between KCC and TWS in this docket are related solely to service territory and do not involve the monopoly abuse issues mentioned in this complaint.

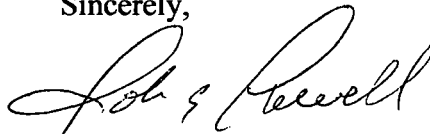
In support of its complaint, KCC submits the following attached evidence for the TRA's consideration:

1. Allegation of violations by TWS submitted to the Tennessee Department of Environment & Conservation.
2. Allegation of violations by TWS submitted to the Tennessee Attorney General's Office.

3. Affidavits from Tennessee state agencies documenting the non-existence of necessary engineering and contractors licenses by TWS to construct a wastewater system.
4. Attorney affidavit regarding TWS business practices, abuse of monopoly power and forged documents.
5. Documentation regarding the quoted price of a constructed wastewater system to KCC from TWS.
6. TWS documentation of additional steps required before a planning document could be filed in Williamson County.
7. Documentation on other contracts offered to KCC by TWS.

Thank you for your prompt attention to this matter. If you have any questions, or if I may be of further assistance, please do not hesitate to contact me either by mail or by phone at 615-370-4432.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Powell".

John Powell

General Manager for King's Chapel Capacity

Attachments

Kings Chapel Subdivision
John Powell
Kings Chapel Capacity LLC
1413 Plymouth Dr.
Brentwood, TN 37027

January 13, 2005

Mr. Wade Murphy
TDEC
Division of Water Pollution Control
6th Floor L&C Annex
401 Church Street
Nashville, TN 37243-1534

Hand Delivered

Dear Mr. Murphy,

As you may be aware, there were several reasons why we the owners of the real property known as Kings Chapel Subdivision, and the developer, Ashby Communities LLC, individually and jointly decided that we could not conclude negotiations or commence any business relationship with Tennessee Wastewater Systems, Inc. (TWS) or their family of affiliated, spin off or holding companies (TWS OWNS).

Last Fall, after we met with an acting Chief of the Energy and Water division of the TRA, Mr. Hal Novak, we began to investigate and understand the total disregard the Pickney's have for County, State and Federal statutes and rules that defined, governed and then regulated their businesses.

Last Friday I was pleased to hear that TDEC had Made the decision to terminate the SOP of TWS. We have complied to the amendments your department requested.

We have been waiting, for the decision made Friday for some time, the notice period will only cause us extra expense, and further our delays. As the property and the RSF system have already gone through the public notification process, and the treatment facility is built we would ask TDEC to research this notification process.

On Tuesday December 28th 2004 Hal Novak, Elaine Powell and myself met with Mr. Polk and yourself, we discussed several issues the following ELEVEN violations of TWS is a partial summary of the meeting we had. I feel it important to have them as part of the record. Please understand that TWS has violated many more State Rules and TCA Statutes. The ones listed below we feel have a direct relation to TDEC.

Allegations of TWS violations of the Rules of TDEC and State Statutes.

ONE

Duty to Comply, TDEC can not police all of the business practices of the person(s) who hold State Operating Permits. That is why part (a) of section (2) in the TDEC rule 1200-4-5-.07 is perhaps one of the strongest rules under the "Terms and Conditions of Permits" this rule requires the permit holder to follow the rules.

1200-4-5-.07 TERMS AND CONDITIONS OF PERMITS.

(2) The following standard conditions, where appropriate, apply to NPDES permits as well as state permits issued for the treatment, collection or disposal of wastewater:

(a) Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Water Quality Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(TWO, parts a,b,c,d,& e) Obtaining permit by making misrepresentations

TWS informed our engineers, our attorneys, others and us that they had the exclusive rights to provide sewer service within the bounds of the Milcroftin water utility district. They had even convinced Gregg Langliers the County planner of this misrepresentation. They even told us they were the monopoly for that area, that also was a material misrepresentation. TWS within their sales pitch says that they are highly regulated by both the TRA and TDEC, while this is true we were led to believe that they abided by these regulations. TWS definitely made misrepresentations in the description of their exclusivity to provide sewer service. To continue these misrepresentations the permittee name on the application is On Site Systems, Inc. Arrington Meadows. Arrington Meadows LLC was then and still is the legal owner to the property, which encompasses the sewer treatment facility and the drip fields. Arrington Meadows never gave TWS permission to use it's name within the space that reads Name of City, Town, Industry, Corporation, Individual, Etc. on the Application For State Operation Permit completed by TWS. In fact On Site Systems, Inc. was not the legal name of that entity at the time they submitted the application to TDEC. IN fact on June 30th On-Site Systems signed a corporate amendment to change their name and filed the name change before their SOP application was submitted to TDEC. They only gave TDEC official notice of this name

change after Kings Chapel filed an application for an SOP on the same property. They must have had some concern or they would not have notified TDEC.

The contract they have submitted is a forgery, however, if it were real, the system and the permit were created long before their forged contract was supplied to TDEC. Please note in a letter from Sharon O. Jacobs of Bone McAllester Norton PLLC on October 22nd 2004 which reads, "(2) the system was created under the terms of a contract with Powell" the system and the sop permit were created long before the date of the contract which she attached to that letter. Please review the dates of this contract. The contract was signed by Robert Pickney on October 3rd but drafted on November 3rd how could Robert sign a document that was not in existence. Their attorney says the system was created from the contract, however, the TDEC SOP permit for the system and the design plans for the system predate the contract by several months. Both the Pickneys and their attorneys have problems with dates and the truth. There was no contract for TWS to provide us with Sewer Service at the time they filed an SOP with TDEC for our property.

1. Permit obtained by misrepresentation

- a. TWS misrepresented their authority granted by the TRA, leading us to believe they were the only ones that could obtain a sop permit from TDEC.
- b. TWS did not have permission to use Arrington Meadows name in the SOP application.
- c. On-Site Systems, Inc was not the legal name of the applicant at the time they submitted the SOP to TDEC
- d. Filed SOP without a contract with the property owners to construct a system or provide sewer service.
- e. Robert Pickney, Vice President of TWS signed both the SOP application and the contract proffered by their attorneys, however, these signatures are different and appear to be signed by different people.

1200-4-5-.06 TERMS AND CONDITIONS OF PERMITS. Taken From TCA 69-3-108

(d) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition. Causes for such permit action include but are not limited to the following:

1. Violation of any terms or conditions of the permit;
2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; and

Obtaining a permit by misrepresentation is cause for permit action; the above rule does not imply whom the applicant must make misrepresentations to in the process of obtaining the permit. We request that the permit issued for our property be modified to

reflect the permit holder the property owners request not TWS who obtained the permit under false pretenses.

Additional violations of the terms and conditions of this permit include the following:
The effective date of permit no. SOP 03032 is November 1, 2003

(THREE)

Within the issued permit SOP 03032 Under D. Reporting:

The first Operation report is due December 15th 2003.

I have asked for all documents relative to this permit, I have not reviewed any operational reports in the permit file at TDEC. I would suggest that even though the permit requires the report TWS has not completed one. Under E of the permit, Schedule of Compliance, "Full operational level shall be attained from the effective date of this permit."

(FOUR)

Within part B of the Permit, Changes effecting Permit, Part 1. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

TWS completely ignored this term of the permit. TWS made plans to add to this permitted facility by first meeting with Williamson County Planning Staff in February of 2003, to allow another residential subdivision to tie into the treatment facility thereby making an addition. This plan was then considered by the Planning Commission, then went to the County Water and Wastewater Board then back to the Planning commission for final approval in June of 2003. To my knowledge no notice exists in the files advising the Director of this well planned change before or after it was approved at the County level.

(FIVE)

In Part III of the permit No. SOP 03032, Other Requirements

TWS is required to Place Signs. "No later than sixty (60) from the effective date of the permit, the permittee shall have the above sign(s) on display in the location specified.

No Signs are in place, I am sure these signs are additionally meant to protect the soils and the drip lines from disturbance.

(SIX, parts a,b,c,d, & e)

Under Rule 1200-4-2-.01 Registered Engineer Required.

1200-4-2-.01 REGISTERED ENGINEER REQUIRED:

Whenever any new works or change in existing works is contemplated whereby sewage, industrial wastes, or other waste will be discharged into or adjacent to any waters of the State, a registered engineer must plan, design, and inspect the construction of any such works; also, a registered engineer must assist in the start-up of and outline correct operating procedures for any new or altered wastewater treatment or water quality control facilities. Any registered engineer herein required shall be governed by the terms of Sections 62-201 et seq. of the Tennessee Code Annotated as amended which is known as "The Act Creating for the State of Tennessee a State Board of Architectural and Engineering Examiners." Any project wherein the contemplated expenditure for the completed project does not exceed five thousand dollars (\$5,000), shall not require the services of a registered engineer. However, regardless of the contemplated expenditure for the completed project, all of the requirements of all other regulations in this section, including the requirement that plans and specifications for such project must be submitted to and approved by a representative of the Commissioner, Tennessee Department of Public Health, shall be followed.

Within the above rule TDEC draws in the rules of The State board of Architectural and Engineering Examiners, within those rules several other violations occur which directly effect the SOP permit at issue:

- a. Pickney Brothers Inc. was not a licensed Engineering Firm please see Exhibit Two.
- b. Misconduct under Rule 0120-2-.07 The State Board of Architectural and Engineering examiners please see exhibit Three
- c. Conflict of Interest under Rule 0120-2-.05 State Board of Architectural and Engineering examiners please see exhibit Four
- d. Service in Areas of Competence Rule 0120-2-.03 State Board of Architectural and Engineering examiners please see exhibit Five.
- e. Proper Conduct of Practice under Rule 0120-2-.02 State Board of Architectural and Engineering examiners please see exhibit Six

It is our opinion that while Pickney Brothers, Inc was not registered as an Engineering firm, Robert Pickney was a licensed engineer he would then be personally responsible for any fines from TDEC or revocation of his license from the State Board of Architectural and Engineering Examiners for the above violations. What is more egregious is this is not the first time the Pickney Brothers engineering firm or Robert Pickney have been associated with such violations. Please review a complaint filed by the Williamson County Health Department. Please see as Exhibit Seven

Forged Contract Issues While we can prove, it is our solid position that the contract they have proffered is a forgery, however, they can not escape the fact that the terms and conditions within that contract violates still more rules of TDEC.

(SEVEN) The proffered contract dictates that, "The Developer is to install collection system" collection system is a part of the Sewerage System.

69-3-108. Permits.

(a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;

The above State statute makes it unlawful for anyone other than the permit holder to construct sewerage systems. In the proffered contract TWS makes us and their TWS OWNS companies do the construction so TWS can then charge inspection fees of up to \$400,000 on this sewerage system. Please see exhibit Eight.

(EIGHT)

Facility Abandoned, TWS has abandoned the sewer system and the facility. TDEC has no other choice but to modify the permit to be placed in Kings Chapel's name.

TWS will not complete construction of sewerage system and tells the developer he must complete construction, which is illegal, and tells developer that unless they make unlawful payments and enter into an unlawful contract that they will never provide sewer service or operate the system. Developer has offered several times to pay legal amounts TWS has rejected all of these attempts. TWS counsel, Henry Walker, has told us twice

they will not discuss the law they are only about Money. We have found it impossible to negotiate like this, as we are liable and insist on conducting business legally.

Hal Novak, formerly with the TRA explained to Mr. Wade Murphy and Mr. ED Polk that TWS (a utility) was not allowed to make a profit on the construction of a sewer facility. He also explained to them that affiliated, spin-offs or holding companies owned by the utility were not allowed to do what a utility was disallowed from doing.

TWS through their owned companies (TWS OWNS) are making over \$700,000 profit from the construction of the sewer facility at issue.

(NINE)

When TDEC tied the rules and State codes which regulate The State Board of Architectural and Engineering Examiners to the Permits they also tied in all Federal, State and Local building laws and regulations. Including the (engineer) registrant shall not furnish limited services in such a manor as to enable unregistered persons to evade laws applicable to Federal, State and Local building Laws. This is exactly what Pickney Brothers Engineering firm, TWS, and Robert Pickney have tried to accomplish. TWS & TWS OWNS conspired to allow and mandate that the sewerage system be constructed by unlicensed contractors thereby defeating the State Contracting Laws. (Building laws)

Your office has letters from Mr. Richard Militana explaining the serious situation we have concerning the construction of our Sewer system by unlicensed contractors. More important, however, is that Tennessee Wastewater, Inc. (TWS the utility) nor On Site Capacity Development Co. can ever return to the system or site to finish the construction, repair or even maintain the system with out defeating State Contractors laws. As a penalty for unlicensed contractors they are never allowed to return to the job in which they were unlicensed.

(TEN)

No Bond TWS was required and had a mandatory duty to place a bond, or obtain notice from the department that other financial security was approved. TWS ignored this State statute.

69-3-122. Sewerage system contractors or operators - Bonds or security - Noncomplying or abandoned facilities.

(a) No person shall construct, operate or hold out to the public as proposing to construct or operate a sewerage system unless such person

first provides a bond or other financial security to the department, and has received approval of the same.

This State statute required TWS to place a bond before construction was started. TWS never purchased a bond for this system and has now abandoned the system.

(ELEVEN)

TWS and Charles Pickney Jr. has proffered a contract to TDEC that is a forged document. The signature page was signed one month before the document was drafted?

We have shown TDEC staff several documents from Charles Pickney Jr. stating that no contract exists. In one of those documents he extorts us by saying if we don not sign a contract he will not sign our final plat which means he will not provide sewer service or operate the plant under the TDEC SOP.

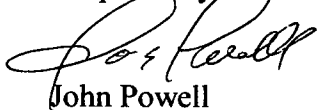
The Contract he has proffered is not with the property owners. IN fact his own company name had been changed several months before.

We have audio tapes of Charles Pickney in June of 2004 saying that they do not have an agreement with us. The tapes also describe the terms and conditions two different contracts they want us to sign. Those tapes are backed up with documents the two different contract options he was asking us to enter into. These tapes are being transcribed and we will provide them to TDEC in the next few days.

We have the affidavits of a Tennessee attorney hired to draft the contracts in 2004. He states that Robert Pickney and I, told him no contract was in existence. Yet Charles offer's one that was signed in 2003.

Charles Pickney forged this document only when he learned we were not going to use his utility and use another. We were shocked that he would do something like that. However, he only gave it to TDEC when TDEC said they were going to terminate his SOP. He did not volunteer it. TDEC administratively has the obligation to review it and issue an opinion on the contract relevant to the documents we have provided and that are in record at TDEC concerning this contract.

Respectfully Submitted,



John Powell

John Powell
1413 Plymouth Drive
Brentwood, TN 37027

November 9th 2004

Jeff Hill, Esq.
Senior Counsel
Office of the State of Tennessee Attorney General
P.O. Box 20207
Nashville, TN 37202 - 0207

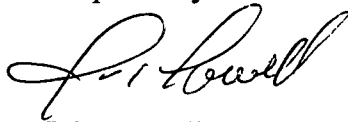
Dear Mr. Hill,

Please find attached for your review a report surrounding our experience with obtaining sewer services for our development. I would like to discuss this matter further at your convenience and would therefore like to arrange a meeting.

You will also discover some of this experience is astounding. When we initially met with the Pickney's legal counsel, we tried to discuss the laws and regulations surrounding this business, and they said we don't want to discuss that. At our second meeting, again, when I asked their counsel if he had informed his clients about the laws and regulations, some of which they had violated, he told me, this meeting is not about the law, it is about money.

We can show you our extensive attempts to pay lawful amounts and enter into legal contracts. It's amazing to me that the Pickneys, operating a State empowered entity, have violated so many State Laws and have in so doing impeded by many months our multiple million dollar project, including currently further delaying our project at the TRA.. By their improper methods, they are definitely affecting commerce in this State.

Respectfully Submitted,



John Powell

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Introduction

As we understand it, in order to plan, construct and then operate a sewer system, an entity, must obtain a State Operating Permit (SOP) from the Tennessee Department of Environment and Conservation (TDEC). In order to offer public sewer service in a particular geographic area and charge homeowners' monthly sewer charges an entity needs to have a Certificate of Convenience and Necessity (CCN), issued by the Tennessee Regulatory Authority (TRA).

From our perspective, Tennessee Wastewater Systems (TWS) and On Site Capacity Development Corporation [or Company] (OCDC) and their family of related companies have created a business plan which as a matter of practice manipulates and violates for financial gain State laws, rules, terms and conditions of the SOP's and the CCN granted to them from the various State Departments and Authorities.

As we have discussed, TWS, using these same business practices, have manipulated many other developers across the State, including in Williamson County, in the same manor and for different financial amounts. Many of the developers are not aware of inappropriate practices of TWS, and if they are, they only understand bits and pieces as they relate to their own experiences. Many developers have been and are concerned through out their experience that if their agreements to build and operate

sewer plants or the utility that services them and their homeowners were withheld by TWS or were found contested by law, it would financially ruin them.

If the State Attorney Generals Office and the Tennessee Regulatory Authority finds a way to eliminate this financial threat to the developers and the people who have done business with TWS, they will find these other developers more willing to discuss their experience. It appears to us that several of the violations of State laws and regulations mandate that the permits of TWS should be terminated by TDEC and that their CCN should be revoked by the TRA.

As one looks at the corporate financials of TWS, TWS appears to be a shell. They have approximately 48 sewer systems, but only one employee, their corporate president, Charles Pickney Jr. We understand that they contract the operation of their sewer business out to others. The examination of those contracts to operate would better reveal the assets of TWS. We have relied on what information was available to us, much of which came from TWS itself. We can share the numerous documents we have your office, if that would be helpful

From my perspective, TWS & OCDC and their family of related companies violate State Laws and ignore State Rules for a reason. It is not a mistake, they are not misinformed, they do it for financial gain. The financial gains we have identified can be separated into four different areas as follows:

1. The County Planning Scheme.
2. The Bonding Letter of Credit Scheme
3. The Inspection Scheme
4. State Tax Fraud

As you read this report, references are made to these four topics. At the end of this report, in conclusion, a short explanation of the four topics can be found.

General Information

A wastewater system is not only the treatment plant; it is the entire collection system from the sources (residential homes & businesses) through the treatment plant and then includes the disbursement of the effluent treated water. There are several different ways to collect, treat and disburse. In Williamson County, it is necessary for the utility to own the land, which encompasses the entire wastewater system. We find the definition of “*construction*” as defined below is important to understand as TWS violates many State codes in relation to the construction of Public Sewer Systems. We find, it is also important to understand the State definition of “*Public Sewer System*”.

Title 68 Chapter 221 Water & Sewerage
68-221-201. Definitions.

As used in this part, unless the context otherwise requires:

(2) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, and the inspection and supervision of the construction of sewage treatment works;

68-221-101. Definitions.

(9) "Public sewerage system" means the conduits, sewers, and all devices and appurtenances by means of which sewage is collected, pumped, treated or disposed of finally. "Public sewerage system" does not include systems for private residences or dwellings;

We understand that a wastewater utility regulated by the TRA has two accounting methods on how they are to record or obtain ownership of the land and the wastewater systems.

The first method allows the utility to make an investment, purchase the land and build the wastewater system to serve the public. The TRA allows the utility to make a return on this investment.

The second method allows for someone else (developers, municipalities) to build and pay for the system and then donate the system to the utility who will operate it. As the utility has no investment they are disallowed any return on investment. In other words the utility is disallowed a profit on the wastewater system because they have no investment in it.

DECEPTIVE ACTS

Numbers one through eight below regardless of any other State law they violate could all be considered deceptive acts under the Tennessee Consumer Protection Act of 1977.

47-18-104. Unfair or deceptive acts prohibited.

(a) Unfair or deceptive acts or practices affecting the conduct of any trade or commerce constitute unlawful acts or practices and are Class B misdemeanors.

(b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:

(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

1. TWS told our engineers, our attorneys, and us that they were a monopoly regulated by the State and Federal Government (TDEC & TRA, EPA) and as such they were the utility of record for our geographical area and that only they could provide us with residential sewer service. This was deceptive, they did not have this exclusive right to serve our property. Please See EXHIBIT ONE affidavit of Nicholas M. Romer.

Note *It is a matter of record in several petitions past and present at the TRA that TWS uses the word monopoly as a deceptive sales strategy across this State yet to our knowledge the TRA has never corrected this deceptive business practice*

2. TWS told our engineers, our attorneys, and us that they the "Utility" **would not** provide utility service unless we used a specific contractor, On Site Capacity Development Co (OCDC) to plan, engineer and construct the Wastewater treatment system. This is extortive in nature and certainly unjust; however, it becomes very clear that this is a key element in their **business plan**.

3. TWS was asked how much this wastewater system would cost. They evaded the question by saying how highly regulated they were. Moreover, they gave approximations of costs in relation to how many homes that would eventually be served. TWS stated that the exact costs would be outlined in the DDR & DSIR report that they would have to provide to the county in order for us to obtain site plan approval from the County Planning Commission. They told us the per home charge (cost) would be approximately \$6,000.00 dollars. We knew for the exact same product they charge \$3,400 per home in Lebanon TN. Wilson County. Charles Pickney Jr. President of TWS told us our rate was higher because our property values were more and that the homes to be constructed were worth more. He said the real estate market in Williamson County was different from Wilson County.

Note *TWS knew that the detailed costs of the wastewater system in the DDR and DSIR would not come close to the price they had given us. They answered the question in a deceitful manor, not revealing the price they intended to put in the DDR and DSIR so they could entice us to proceed having us believe we would receive a regulated price. This is the start of the County Planning scheme.*

TWS violates two separate State statutes (65-4-122 and 65-5-204) in this process. These statutes that regulate utilities are provided in condensed versions below. TWS demands that their construction company build the wastewater systems. They **indirectly** charge and demand a greater compensation in Williamson County than that they charge or demand in other parts of the State.

65-4-122. Discriminatory charges -- Reasonableness of rates -- Unreasonable preferences -- Penalties.

(a) If any common carrier or public service' company, directly or **indirectly**, by any special rate, rebate, drawback, or other device, **charges, demands**, collects, or receives from any person a greater or less compensation for any service within this state than it charges, demands, collects, or receives from any other person for service of a like kind under substantially like circumstances and conditions, and if such common carrier or such other public service company makes any preference between the parties aforementioned such common carrier or other public service company commits **unjust discrimination, which is prohibited and declared unlawful.**

(b) Any such corporation **which charges**, collects, or receives more than a just and reasonable rate of toll or compensation for service in this state **commits extortion**, which is prohibited and declared unlawful.

(c) It is unlawful for any such corporation to make or give an undue or unreasonable preference or advantage to any particular person **or locality**, or any particular description of traffic or service, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage.

65-5-204. Unjust rate, fare, schedule or classification prohibited.

(a) No public utility shall:

(1) Make, impose, or exact any unreasonable, unjustly discriminatory or unduly preferential individual or joint rate, or special rate, toll, fare, charge, or schedule for **any product**, or service supplied or rendered by it within this state;

(2) Adopt or impose any **unjust or unreasonable classification** in the making or as the basis of any rate, toll, charge, fare, or schedule for **any product** or service rendered by it within this state.

4. It was an unjust and deceitful business practice for TWS to submit the DDR and DSIR to the County Planning Commission without letting the land

owners review. When we questioned about the cost of the wastewater system in the DDR & DSIR (~\$450,00) not correlating with what we had been previously given as a construction price (\$1.3M) , TWS made it very clear to us that we had just received Planning Commission approval and that we did not want to upset that by protesting too much about the construction price. TWS said other developers were fine with the same charges and demands that they were now making of us.

Note *Once the county planning commission granted our site plan, TWS used it as a tool to negotiate against us. They know that they have a step up over the developer once the planning commissioners vote. TWS as part of their County Planning Scheme make sure questions about price that could be answered before county submittals are not answered. We trusted them because they were a State empowered entity and at that time they told us we had no other options. In Williamson County once a residential site plan is approved it has to move along through other votes and continue down a due diligence path towards final recordation of plats. TWS made us aware of these county deadlines and tried to coerce us into making unlawful payments and then demand us to enter into unlawful contracts. If we did not our site plan would be jeopardized and we would lose hundreds of thousands of dollars in the process. They have been effective in their coercion; our site plan is now in jeopardy and to date it has cost us several hundred of thousands of dollars not to cave into their inflated construction price.*

5. TWS informed us prior to approval of the site plan that we had excess sewer capacity, that we could sell in the surrounding area and would be worth millions of dollars to us.. They used this as a tactic to get us through Preliminary and then Final Plat without being too concerned about the price they had given us. Two hours before the final plat was to be voted on (June 10th 2004) TWS informed us that we did not have this extra capacity and that we would never the less have to immediately “SIGN A CONTRACT” and “PAY UP” or abandon our residential subdivision that was already under construction. This was a deceptive and coercive business practice.

6. TWS offered to reduced the construction cost of the wastewater system by \$385,000 (from \$1.3 M to \$978,000) if, we the developers, would pledge assets and post the required Letters of Credit and related bonds that TWS was supposed to provide to Williamson County. TWS through its construction company thus placed a utility bonding expense as a construction expense. How they would account for this with the TRA is unclear. Since \$385,000 is over 25 years of bonding expenses paid for in advance by the developer, how could they then charge it in their monthly sewer bills to their customers?

Note *It is an unjust and deceptive business practice to charge an expense of the TRA regulated utility through a construction company, make the developer pay it, hide it as a construction cost from the TRA and the State. Then through the regulated tariff charge that same expense to the citizens of this State through their sewer bills. This appears to us to be an unjust Bonding Scheme, that has the Pickney's paid for bonding, when in fact it is a developer's expense.*

This Bonding issue is what led us to start discussions with Hal Novak, then Chief of the TRA (Waters & Wastewater Utilities), at which time we discovered that we had been misinformed by TWS on several occasions about bonding. We have much more information on this topic

TWS business practices certainly are disallowed under the following State Statute as they relate to public utilities.

65-4-115. Unjust practices and unsafe services prohibited.

No public utility shall adopt, maintain, or enforce any regulation, **practice, or measurement which is unjust**, unreasonable, unduly preferential or discriminatory,

7. The contract the Pickneys have submitted requires both TWS and OCDC to be licensed contractors, which they are not.. Because of this, the contract is unlawful on its face and therefore is unenforceable. . In this contract TWS is responsible to **supervise** as listed below. Furthermore, OCDC is referenced to as “**contractor**” and responsible for all of the necessary work for the design and installation of the treatment and disposal system. Please see State affidavits which prove that TWS and OCDC are not licensed contractors by this State. Please see a checks totaling for \$265,000 dollars paid to OCDC for work as a contractor. A copy of this Contract is attached in Exhibit ONE.

Furthermore the Pickneys submitted an altered contract document to the TRA, TDEC and a court in Williamson County. This version of a contract emerged when TWS learned that we sought another TRA utility to serve our residential neighborhood. A contract similar to this one was signed by John Powell. . The top two pages of this contract have been altered from it's original state, but not the signature page.

8. It was an unfair and deceptive act (T.C.A. 47-18-104, Unfair or deceptive acts prohibited) for TWS and OCDC to present themselves as contractors and to act in the capacity of a contractor. Please review Chapter No. 492 Of The Public Acts Of 2004 listed in its entirety below .

Tennessee Acts

CHAPTER NO. 492 OF THE PUBLIC ACTS OF 2004

SENATE BILL NO. 2244

By Fowler, Dixon, McLeary

Substituted for: House Bill No. 2399

By Wood, Todd, DuBois, Sharp, Vincent, Bittle, Shaw, Bunch, Pleasant, Gresham, Bowers, Brenda Turner, Baird, Hensley, Black, Rowland, Phillip Johnson, Lynn

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18 and Title 62, Chapter 6, relative to consumer protection violation for misrepresentation of unlicensed contractors as licensed contractors.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section **47-18-104**(b), is amended by creating a new subdivision:

() Representing that a person is a licensed contractor when such person has not been licensed as required by § **62-6-103** or § **62-37-104**; or, acting in the capacity of a "contractor" as defined in Tennessee Code Annotated, §§ **62-6-102**(3)(A), **62-6-102**(5) or **62-37-103**(5), and related rules and regulations of the State of Tennessee (or any similar statutes, rules and regulations of another state) while not licensed;

SECTION 2. Tennessee Code Annotated, Title 62, Chapter 6, Part 1, is amended by creating the following new section:

62-6-136. (a) It is unlawful for any person, firm or corporation to represent itself as a licensed contractor, or to act in the capacity of a "contractor" as defined in Tennessee Code Annotated, §§ **62-6-102**(3)(A), **62-6-102**(5) or **62-37-103**(5), and related rules and regulations of the State of Tennessee (or any similar statutes, rules and regulations of another state) while not licensed, unless such person, firm or corporation has been duly licensed under § **62-6-103** or § **62-37-104**.

(b) In addition to the penalties set out in §§ **62-6-120**, **62-37-114** or **62-37-127**, a violation of this section shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, compiled in Title 47, Chapter 18, Part 1, and as such the private right of action remedy under such act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation.

(c) An individual who violates this section and would, but for the provisions of this section, have limited liability as owner of an entity having limited liability protection, including but not limited to a corporation, is personally liable for such individual's own representations, acts or omissions to the same extent as if that individual rendered such representations, acts or omissions as an individual.

SECTION 3. This act shall take effect July 1, 2004, the public welfare requiring it.

PASSED: April 1, 2004

APPROVED this 12th day of April 2004

Additionally not having a State Contractors license has created other problems for TWS and OCDC

Additionally, not having a State Contractor license has other implications.

62-6-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(2) "Contracting" means any person or entity **who performs or causes to be performed any of the activities** defined in subdivision (3) (A) or (6);

(3)(A) "Contractor" means any person or entity who undertakes to, attempts to, or submits a price or bid or offers to construct, **supervise, superintend, oversee, schedule, direct, or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down, or furnishing labor to install material or equipment for any building, highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement, or any other construction undertaking for which the total cost of the same is twenty-five thousand dollars (\$25,000) or more.**

§62-6-120. Penalties.

(a)(1) Any person, firm or corporation who engages or offers to engage in contracting without a license as required by § 62-6-103, or who violates the terms and conditions of any license or renewal granted by the board pursuant to this chapter, commits a **Class A misdemeanor**. The penalties imposed by this subdivision shall not apply to a person who engages a contractor without a license for the purpose of constructing a residence for the use of such person.

(2) Any person, firm or corporation who engages or offers to engage in contracting without a license as required by § 62-6-

103 is ineligible to receive such license until six (6) months after a determination by the board that a violation has occurred. **Additionally, no such person, firm or corporation shall be awarded any contract for the project upon which it engaged in contracting without a license or permitted to participate in any rebidding of such project.**

The above State statute would disallow either TWS or OCDC from completing the wastewater treatment system because neither were licensed contractors. If the TRA allowed TWS to serve our residential subdivision they would be defeating the State Law governing licensed contractors.

Additionally if the TRA allows TWS to serve our Subdivision they also would defeat the TDEC decision to terminate the SOP permit which is explained in further detail below.

Kyle v. Williams, 98 S.W.3d 661 (Supreme Ct Tenn. 2003) ...**In explaining these rules, this Court in Farmer adopted the following rationale from a decision of the Washington Supreme Court:...**

The [contractor's licensing] statute was designed for protection of the public. The overriding public policy must not be defeated by an attempt to accommodate one who has violated its specific provisions, albeit unwittingly. The law will be nullified if noncomplying contractors are permitted to evade the statute ..."

TDEC Violations

TWS has violated the terms and conditions of the State Operating Permit (SOP) permit granted to them by TDEC. In the submitted contract, TWS violates the terms of the SOP permit by making the developer install the collection system which is part of the system. It would be unlawful for the developer to construct or install the collection system but as stated above TWS is requesting that they do so in their submitted contract.

69-3-108. Permits.

(b) **It is unlawful for any person**, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, **except in accordance with the conditions of a valid permit:**

(2) **The construction, installation**, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;

Additionally TWS has violated the terms of the SOP by not obtaining a bond in regards to the sewerage system they obtained a permit for nor did they receive approval of the same. (69-3-122)

69-3-122. Sewerage system contractors or operators - Bonds or security - Noncomplying or abandoned facilities.

(a) **No person shall construct, operate or hold out to the public as proposing to construct or operate a sewerage system unless such person first provides a bond or other financial security to the department, and has received approval of the same.**

(b) The board may by regulation establish the amount and form of such bond or financial security for various sizes and types of facilities. In no case shall the amount of the bond or financial security exceed seventy-five thousand dollars (\$75,000). The purpose of the bond or financial security shall be the protection of the public health, welfare, and the environment of the state.

TWS had a duty to comply with the terms and conditions of the permit granted to them by TDEC.

RULES OF TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION DIVISION OF SOLID WASTE MANAGEMENT

1200-4-5-.07 TERMS AND CONDITIONS OF PERMITS.

(1) **When a permit is granted** it shall be subject to the provisions of Section **69-3-101**, et seq. Tennessee Code Annotated, these regulations, and any special terms or conditions the commissioner determines are necessary to fulfill the purposes or enforce the provisions of that section.

(2) The following standard conditions, where appropriate, apply to NPDES permits as well as state permits issued for the treatment, collection or disposal of wastewater:

(a) **Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Water Quality Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.**

TWS has knowingly violated the terms and condition of the SOP permit granted to them by not obtaining bonds (69-3-122)

TWS has knowingly violated the terms and conditions of the SOP permit granted to them by ignoring (69-3-108). TWS the permittee has others construct (which is unlawful) the wastewater system so that they may charge over \$400,000 in inspection fees. If they followed the terms and conditions of the SOP only TWS would be allowed to construct and then they would not be able to charge the developers inspection fees. The term

construction as it relates to sewer systems is in itself regulated. (See Page 3 Definitions) This is the basis for their Inspection Scheme. It would be hard to charge someone for inspecting your own work. We feel this may be one of the primary reasons OCDC was created. They violate the terms and conditions of the SOP, knowingly, in order to fraudulently charge utility inspection fees. Not only is this an unjust and deceitful business practice it is additional grounds for TDEC to terminate the SOP permit.

TWS had the duty to comply to all terms and conditions of the SOP (1200 - 4-5-.07)

TWS knowingly violates the terms and conditions of the permit for financial gain. The commissioner of TDEC would be justified in assessing the maximum daily amount against TWS. The commissioner must understand that TWS has used the SOP in an attempt to extort money, and in fact if TWS has charged any inspection fees to developers who are gifting the plants back to TWS they have committed extortion as defined in State Statute (65-4-122).

69-3-115. Violations - Penalties - Judgment by consent.

(a) (1) Any person who does any of the following acts or omissions is subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the act or omission continues or occurs:

(B) **Violates the terms or conditions of a permit;**

Additionally, an engineer was required as a condition of the SOP. The engineered drawings tendered to TDEC and Williamson County were completed and tendered to TDEC and Williamson County by an unlicensed engineering firm, "Pickney Bros., Inc." This is in violation of State Code (62-2-601 Practice - Disclosure). These engineered drawings of the sewer system were signed by a registered individual engineer, Robert Pickney, separate from Pickney Bros, Inc. Under the rules which govern his profession, his license should be terminated for specific causes that are outlined in the Rules of State Board of Architectural and Engineering Examiners which include but are not limited to

0120-2-.02 PROPER CONDUCT OF PRACTICE.

(1) The registrant shall at all times recognize the primary obligation to protect the safety, health and welfare of the public in the performance of the registrant's professional duties.

(2) If the registrant becomes aware of a decision taken by an employer, client, or contractor, against the registrant's advice, which violates applicable Federal, State or Local building Laws and Regulations or which may affect adversely the safety to the public, the registrant shall:

(a) Report the decision to the local building inspector or other public official charged with the enforcement of the applicable Federal, State or Local building Laws and Regulations;

In the above, Proper Conduct Of Practice, Robert Pickney would be required to report a company he owns 25% of either TWS or OCDC as being unlicensed contractors. These contractors violated State Laws in the construction of a public Sewer plant and system.

0120-2-.05 CONFLICTS OF INTEREST.

(1) The registrant shall conscientiously strive to avoid conflict of interest with his employer or client; but, when such conflict is unavoidable, the registrant shall forthwith disclose the circumstances to his employer or client.

(2) The registrant shall avoid all known conflicts of interest with his employer or client, and shall promptly inform his employer or client of any business association, interests or circumstances which could influence his judgment or the quality of his services.

(3) The registrant shall not accept compensation (financial or otherwise) from more than one party for services on or pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(4) The registrant shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.

(5) The registrant shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his client or employer in connection with work for which he is responsible.

Robert Pickney is in violation of all of the above sections within 0120-2-.05 additional information is available on each of the above parts.

0120-2-.07 MISCONDUCT.

(1) The registrant shall not knowingly associate with, or permit the use of his name or firm name in, a business venture by any person or firm which he knows, or has reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.

(2) The registrant shall not furnish limited services in such a manner as to enable unregistered persons to evade:

(a) Federal, State and Local building laws and regulations, including building permit requirements; or

(b) Registration requirements of T.C.A. Title 62, chapter 2.

(3) The registrant may not take over, review, revise, or sign or seal drawings or revisions thereof when such plans are begun by persons not properly registered and qualified; or do any other act to enable either such persons or the project owners, directly or indirectly, to evade the registration requirements of T.C.A. Title 62, Chapter 2.

Robert Pickney is in violation of all of the above sections within 0120-2-.07 additional information is available on each of the above parts.

TRA Violations

TWS has violated several T.C.A. State Statutes under title 65, which were created to regulate public utilities, a few of which were previously mentioned in this report.

The TRA guidelines for Utilities doing business with affiliated companies have been completely misapplied by TWS. Those guidelines are available on line at the TRA website.

Last year's financial report of TWS is available through the internet at the TRA website. Last year TWS reported \$206,479 in total gross receipts; Charles Pickney, Jr. chief officer, only employee, of TWS, signed this. On our sewer system alone, they collected a total \$285,775 dollars on our one plant. TWS operates approximately 48 plants. A copy of the front page of this financial is attached as Exhibit TWO

I would suggest that all of their inspection fees are collected under the disguise of construction fees and never reported to the TRA. Further, where is the bonding income reported?

I submit another document (exhibit THREE) entitled "Estimate of Costs for the Sewer System for Kings Chapel Subdivision with a Capacity of 64,500 Gal/day (215) lots. Charles Pickney, Jr. first gave me this document on a hand written on notepaper. I had him sign, and made a copy he then took the Original back and had it typed up and added a few more details. Note on this document how he says Pay to Utility review fees and inspection fees. TWS has never reported as income on their financials, inspection or review fees, which would be subject to a 3% tax. Alternatively, if they are just charging us and they have not charged others they commit extortion under T.C.A. 65-4-122.

Other assumed violations of On Site Capacity Development Co., (OCDC)

1. Another developer in Wilson County informed us that OCDC did not have workers comp insurance. When they asked Robert Pickney, he said they didn't need it because they were a regulated Utility and were exempt. When pressed further on this issue he tried to substitute another company as the company who had the insurance.

2. We cannot find evidence of a State Business License for OCDC who has collected over \$265,000 on our sewer project alone. This State license in theory could exist in any county within the State. We feel they do not have one, because then they would have to pay additional tax as described above. OCDC headquarters are located in Davidson County.

Short explanation of Schemes

Planning Scheme. TWS purposely ignores directly answering questions related to their products and services. They say, "Wait until the Planning Commission votes, then all these questions can be answered in detail because we will have the DDR & DSIR completed, and if the County should vote against, all these discussions become irrelevant". After they get Planning Commission approval their attitude completely changes they become defiant if you ask a question. They then use the timelines required by the Planning Commissions to coerce a better deal for their Utility.

Bonding Scheme. TWS through their construction company inserts a number (in our case \$385,000) for bonding costs. This is a utility expense not a cost of construction. However, it is quite disturbing when you realize that the Utility is then charging the citizens who pay for their sewer every month this same expense to the Utility. The Pickney's are in fact *double dipping* charging once to the developer and then twice on a permanent basis their customers.

Inspection Scheme. TWS (the Utility) charges review fees for an unlicensed Engineering firm they own and demand that their customers use. They do not disclose this fact. TWS (the Utility) charges inspection fees to inspect the work of their own construction company OCDC. They do not disclose this fact. Inspection and design fees for our project raise the price by \$405,775 on a sewer plant that cost about \$500,000.

State Tax Fraud. We would suggest from the evidence we have collected that TWS is not reporting their total Utility Gross receipts which is taxable under T.C.A. 67-4-406. And should be subject to the penalties under 67-2-121

67-4-406. Miscellaneous public utilities.

(a) Each public utility, other than those specifically enumerated and taxed under another section of this part, shall for the privilege of doing business pay to the state for state purposes an amount equal to three percent (3%) of the gross receipts in this state.

67-2-121. Violations – Criminal penalties.

(a) Any person failing to file a return, as required by § **67-2-107**, or any person violating any rule or regulation that may be promulgated by the commissioner under the authority vested in the commissioner in this chapter, or any corporation failing to furnish the information required by § **67-2-106**, commits a Class C misdemeanor.

(b) The making of a false return with intent to defeat the tax constitutes a Class E felony.

What we ask of the State Attorney General's Office

1. For a meeting to discuss at length this report, and have present those attorneys which specialize in matters which relate to The Tennessee Department of Environment and Conservation and The Tennessee Regulatory Agency.
2. We would ask for the State Attorney General or the Consumer Advocate Division to verify with the TRA what State Statutes they would be defeating if they granted the Intervention of TWS in the Petition with docket # 04-00335.
3. We would ask that The State Attorney's office share appropriate parts of the information provided in this report to the proper State agencies to improve practices in this industry.
4. We would ask that the State Attorney Generals Office after investigating the allegations contained in this report to take appropriate actions, including potential prosecution of TWS, OCDC, and others for their deceptive acts which are in violation of the Tennessee Consumer Protection Act of 1977.

John Powell
1413 Plymouth Drive
Brentwood, TN 37027

November 10, 2004

Jeff Hill, Esq.
Senior Counsel
Office of the State of Tennessee Attorney General
P.O. Box 20207
Nashville, TN 37202 - 0207

RE: Updates to Nov 9th report.

Dear Mr. Hill,

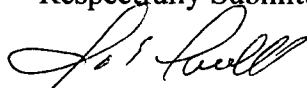
As others involved have reviewed the letter I sent to you yesterday, last night I received some comments. I told you I had reduced from 30 pages to 17. However, one comment I felt strong and thought I should convey, it was the addition of another scheme.

Construction Scheme. As TWS the regulated Utility is guaranteed to make a profit, even though a regulated profit, as the TRA dictates. TWS is disallowed from making a profit on the construction of a sewer system. Especially, when this sewer system is bought and paid for by a developer or a municipality and then donated along with the real estate to the utility, allowing them to make legal profits for years and years in the operation of the system. The profits allowed by the TRA apparently are not enough for TWS they abuse the power granted to them by the State by saying to developers we will not operate the sewer plant or provide sewer service unless you let this other construction company (which they own) build the plant.

I understand that a municipality in Western Tennessee wanted to take over a sewer plant that had been built and donated to TWS. They gave the municipality a price in the millions and of course, the municipality did not purchase the sewer system. Although this seems wrong, it appears to be legal for the Pickney's, and another way that they can make money other than what the TRA allows for the normal operation of the sewer system.

Along with this letter I will fax copies of affidavits from the State, which show, that TWS nor OCDC have contractors' licenses. I also received an interesting letter from Hal Novak the former Chief of TRA I have included that for your review.

Respectfully Submitted,



John Powell

WHN CONSULTING

19 Morning Arbor Place
The Woodlands, TX 77381

November 10, 2004

John Powell, President
Ashby Communities, LLC
1413 Plymouth Drive
Brentwood, TN 37027

Dear Mr. Powell:

I've reviewed your letter and its accompanying documentation of November 9th to Mr. Jeff Hill of the Tennessee Attorney General's Office describing the process and setbacks that you've endured in seeking wastewater service for your development. In addition to the points that you've raised in your letter, I would also like to briefly describe the primary utility regulatory issues at hand in this process.

As you mentioned in your letter, Tennessee Wastewater ("TWW") currently holds a Certificate of Convenience & Necessity ("CCN") that was granted by the Tennessee Regulatory Authority ("TRA") in order to provide wastewater service to your development. In addition, TWW has a tariff approved by the TRA that specifies the rates TWW may charge to its customers within this service territory. However, nowhere in this tariff does it specify that TWW may charge \$6,000 or any other rate to inspect or install wastewater plant. This is because the installation of wastewater plant is deemed to be a competitive service that can be provided by many construction firms and not a monopoly service with rates set by the TRA.

Through your letter, it has become clear that TWW has used its monopoly wastewater operator status to mandate that the construction of any new wastewater plant be completed and inspected through one of their affiliate companies at above-market prices. This is clearly an abuse of monopoly power by TWW. Unfortunately, it now appears that this abuse has been carried out for some time by TWW in its other service territories with other developers.

Regrettably, due process has required all of the events that you describe in your letter to happen before you could get to this point; that is asking the TRA for the authority to provide wastewater service to your own development. Certainly, all of this could have been avoided simply by paying TWW the construction fees it requested. However, the abuse of their monopoly power would have continued until someone else was forced to go through this same process that you are bearing right now.

John Powell
November 10th
Page 2

Hopefully, this brief letter has provided an overview description of the regulatory circumvention carried out by TWW and its affiliates to your and other developers detriment. If I can be of further assistance, please let me know.

Sincerely,

William H. Novak

Exhibit ONE C PAGES

AFFIDAVIT

OF

NICHOLAS M. ROMER

I, Nicholas M. Romer, being first duly sworn, have personal knowledge concerning the facts contained herein and do swear as follows:

1. I am an attorney licensed to practice law in Tennessee and reside in Williamson County, Tennessee. I have represented John Powell and business entities with which he is associated.

2. At the request of John Powell, I attended a meeting on April 7, 2004 at Mr. Powell's residence with John Powell and Robert Pickney to acquaint myself with the projected business relationship between Mr. Pickney and Mr. Powell and/or their representative entities then existing or to be formed.

3. At the subject meeting Mr. Pickney represented himself and/or his company Onsite Systems, Inc. to be licensed or chartered as a public utility and in some way empowered by a governing Tennessee regulatory authority to have exclusive right to operate a wastewater treatment facility within a geographic area in which Mr. Powell or his entities owned real property. Mr. Pickney also represented that Onsite Capacity Development Company was a licensed contractor also empowered by Tennessee regulatory authority to build wastewater treatment facilities. Based upon Mr. Pickney's representations, I concluded that Mr. Powell, or his existing or proposed entities, had no alternative but to enter into an agreement with Mr. Pickney and his companies if Mr. Powell intended to have wastewater treatment for real property Mr. Powell or his entities owned.

4. At the April 7, 2004 meeting John Powell and Robert Pickney represented to me that there existed no prior agreement, written or otherwise, respecting any matter between Robert Pickney, or any of the entities with which he was associated, and John Powell, or any of the entities with which John Powell was associated.

5. The charge Mr. Powell gave me at the subject meeting was to draft a first-time agreement between Mr. Pickney and Mr. Powell, or their representative entities, concerning the ownership and operation of a wastewater treatment facility in Williamson County. To assist in that task I was furnished a document entitled "SEWER CONTRACT

FOR CLAY ESTATES SUBDIVISION" to be used as a reference document for drafting the proposed agreement. The document referred to Mr. Pickney's company as a "Utility."

6. The parties to the proposed agreement had not yet been determined by the end of the meeting. Mr. Pickney presented to me a business card carrying the business name Tennessee Wastewater, a business name without designation as to the nature of the entity, i.e. "Inc." or "LLC." When I pointed this out to Mr. Pickney he announced that the entity was a Tennessee corporation. At the time the other party to the agreement was also not confirmed since John Powell intended to form a separate legal entity to be party to the agreement. I recommended that the name "ABC, LLC" be used temporarily in the draft of the proposed agreement until Mr. Powell could form a separate Tennessee entity.

7. On April 12, 2004 I began drafting a proposed agreement between Mr. Pickney's company, Tennessee Wastewater Systems, Inc., and an entity to be formed by John Powell.

8. On April 13, 2004 I emailed to John Powell a draft of the proposed agreement between Tennessee Wastewater Systems, Inc. and ABC, LLC, a fictitious entity. and as of the date of this affidavit I have not made any changes to the draft agreement.

9. On October 20, 2004, John Powell presented me with a document titled "SEWER CONTRACT FOR MEADOWBROOK SUBDIVISION," a document apparently alleged by Mr. Pickney to be an enforceable agreement. The document is attached to this affidavit. The alleged agreement includes among its parties Onsite Systems, Inc. and Onsite Capacity Development Company, respectively characterized as a "Utility" and as a "Contractor."

10. On October 20, 2004, John Powell presented me with two executed statements from the Board For Licensing Contractors, Department of Commerce, State of Tennessee. The two statements are attached to this affidavit. One statement attests that as of September 7, 2004, On Site Systems Inc. and Tennessee Wastewater Systems Inc were not licensed contractors within the State of Tennessee. A second statement attests that as of September 1, 2004, Onsite Capacity Development Company was not a licensed contractor within the State of Tennessee.

11. Title 62, Chapter 6, Part 1, Section 2 of the Tennessee Code Annotated, as amended to Section 62-6-136(a), states that "It is unlawful for any person, firm, or corporation to represent itself as a licensed contractor, or to act in the capacity of a contractor...while not licensed."

12. It is the Affiant's opinion that, presuming Onsite Systems, Inc. and Onsite Capacity Development Company (and Tennessee Wastewater Systems, Inc.) were not licensed contractors in Tennessee, and given that conducting business as a contractor without being licensed is illegal in Tennessee, any alleged agreement executed by Onsite Systems, Inc., Onsite Capacity Development Company, or Tennessee Wastewater Systems, Inc. are voidable by an aggrieved party to the agreement.

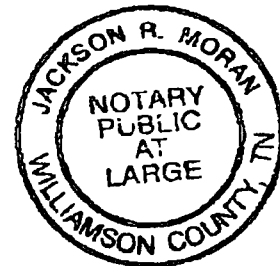
FURTHER YOUR AFFIANT SAYETH NOT.

Nicholas M. Romer
Nicholas M. Romer, Affiant

I HEREBY CERTIFY THAT ON THIS DAY, before me, an officer duly authorized in Tennessee and in Williamson County to take acknowledgments, personally appeared, and having first been duly sworn, Nicholas M. Romer, to me known to be the person described in and who executed the foregoing Affidavit, and he acknowledged before me that he executed the same and has sworn to its contents.

WITNESS MY HAND AND OFFICIAL SEAL, in Williamson County, Tennessee this
21 day of October, 2004.

My commission expires Oct 21, 2007 Jackson R. Moran
Notary Public





STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
BOARD FOR LICENSING CONTRACTORS
500 JAMES ROBERTSON PARKWAY, SUITE 110
NASHVILLE, TENNESSEE 37243-1150
(615) 741-8307 or (800) 544-7693
FAX - (615) 532-2868

September 7, 2004

TO WHOM IT MAY CONCERN:

RE: Tennessee Wastewater Systems Inc and On Site Systems Inc.

Dear Ms. Moss:

The above contractors are not licensed the Licensing Contractors Board to do projects in the State of Tennessee.

Should you need additional information please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bonnie Henderson".

Bonnie Henderson
Licensing Contractors Board.

BH/

Subscribed before me this 17th day of September 2004.

A handwritten signature in cursive script, appearing to read "Carolyn M. Lazenby".
Notary Public

My Commission expires

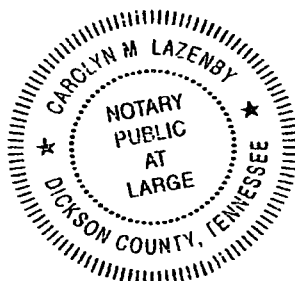
State

County

10/22/2007

TN

Dickson





STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
BOARD FOR LICENSING CONTRACTORS
500 JAMES ROBERTSON PARKWAY, SUITE 110
NASHVILLE, TENNESSEE 37243-1150
(615) 741-8307 or (800) 544-7693

AFFIDAVIT

STATE OF TENNESSEE
COUNTY OF DAVIDSON
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS

IN THE MATTER OF: Onsite Capacity Development Company

Telise R. Roberts, after being duly sworn deposes and says: "I, Telise R. Roberts, as an Administrative Assistant at the Tennessee Board for Licensing Contractors, have made a complete and accurate search of the records of the Board office, and find that **Onsite Capacity Development Company** is not licensed with the State of Tennessee Board for Licensing Contractors" according to T. C. A. Section 62-6-102.

This search took place in the office of the Board for Licensing Contractors, located at 500 James Robertson Parkway, Suite 110 of the Davy Crockett Tower Building in Nashville, Tennessee 37243-1150, on September 1, 2004.

Sincerely,

Telise R. Roberts
Administrative Assistant

Sworn to and subscribed before me this 1st day of September 2004.

Notary Public

My Commission Expires: 5-28-06

Exhibit 2
2/20/04

STATE OF TENNESSEE

COUNTY OF . DAVIDSON

We the undersigned Charles Pickney, Jr.
and _____
of Tennessee Wastewater Systems, Inc.

on our oath do severally say that the foregoing return has been prepared,
under our direction, from the original books, papers and records of said
utility; that we have carefully examined the same, and declare the same to be
a correct statement of the business and affairs of said utility for the period
covered by the return in respect to each and every matter and thing therein
set forth, to the best of our knowledge, information and belief.

Charles Pickney, Jr.
(Chief Officer)

(same)
(Officer in charge of accounts)

Subscribed and sworn to before me this 29th
day of March, 2004

Notary Public, Patricia G. McElroy

My commission will expire _____
My Commission Expires MAY 28, 2008

(Seal)

Name of Respondent Tennessee Wastewater Systems, Inc.		This Report is: (1) <u>X</u> An Original (2) A Resubmission		Date of Report 3/29/2004	Year of Report 2003
				Date report compiled	Fiscal Year End Date

INCOME STATEMENT					
Account Name (a)	Ref Page (b)	Water (c)	Sewer (d)	Other (e)	Total (f)
Gross Revenue:					
Residential		-	172,743	-	172,743
Commercial		-	17,154	-	17,154
Industrial		-	-	-	-
Multi-Family		-	-	-	-
Access Fees		-	16,582	-	16,582
Other (Please Specify)		-	-	-	-
Other (Please Specify)		-	-	-	-
Other (Please Specify)		-	-	-	-
Total Gross Revenue					206,479
			206,479		
Operation & Maint. Expense	W3/S3	-	177,112	-	177,112
Depreciation Expense	F-5	-	131,530	-	131,530
Amortization Expense		-	(131,530)	-	(131,530)
Legal Expense		-	2,747	-	2,747
Other Expense (Please Specify)		-	-	-	-
Taxes Other Than Income	F-7	-	12,654	-	12,654
Income Taxes	F-7	-	1,912	-	1,912
Total Operating Expenses					323,956
Net Operating Income					72,523
Other Income:					
Nonutility Income		-	-	-	-
Development Start-up Costs		-	53,717	-	53,717
Sewer Deposits (new service)		-	10,140	-	10,140
Other (Please Specify)		-	24,438	-	24,438
Other (Please Specify)		-	394	-	394
Total Other Income					88,689
Other Deductions:					
Misc. Nonutility Expenses		-	854	-	854
Interest Expense		-	9,114	-	9,114
Refunds on Deposits		-	1,766	-	1,766
Start-up Expenses		-	20,000	-	20,000
Other (Please Specify)		-	-	-	-
Total Other Deductions					31,734
Net Income					129,478



STATE OF TENNESSEE
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BOARD FOR LICENSING CONTRACTORS
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(615) 741-8307 or (800) 544-7693

AFFIDAVIT

STATE OF TENNESSEE
COUNTY OF DAVIDSON
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS

IN THE MATTER OF: Onsite Capacity Development Company

Telise R. Roberts, after being duly sworn deposes and says: "I, Telise R. Roberts, as an Administrative Assistant at the Tennessee Board for Licensing Contractors, have made a complete and accurate search of the records of the Board office, and find that **Onsite Capacity Development Company** is not licensed with the State of Tennessee Board for Licensing Contractors" according to T. C. A. Section 62-6-102.

This search took place in the office of the Board for Licensing Contractors, located at 500 James Robertson Parkway, Suite 110 of the Davy Crockett Tower Building in Nashville, Tennessee 37243-1150, on September 1, 2004.

Sincerely,

Telise R. Roberts
Administrative Assistant

Sworn to and subscribed before me this 1st day of September 2004.

Notary Public

My Commission Expires: 5-28-06



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
BOARD FOR LICENSING CONTRACTORS
500 JAMES ROBERTSON PARKWAY, SUITE 110
NASHVILLE, TENNESSEE 37243-1150
(615) 741-8307 or (800) 544-7693
FAX - (615) 532-2868

September 7, 2004

TO WHOM IT MAY CONCERN:

RE: Tennessee Wastewater Systems Inc and On Site Systems Inc.

Dear Ms. Moss:

The above contractors are not licensed the Licensing Contractors Board to do projects in the State of Tennessee.

Should you need additional information please feel free to contact me.

Sincerely,

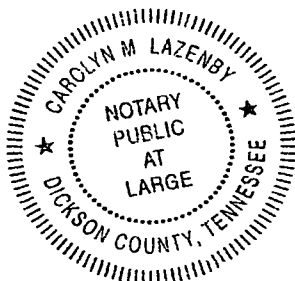
Bonnie Henderson
Licensing Contractors Board.

BH/

Subscribed before me this 17th day of September 2004.

Notary Public

My Commission expires 10/22/2007
State TN
County Dickson





State of Tennessee
Department of Commerce and Insurance
Board of Architectural and Engineering Examiners
500 James Robertson Parkway, Third Floor
800-256-5758 615-741-3221 (Nashville Area)
<http://www.state.tn.us/commerce/boards/ac/index.html>

Nashville, TN 37243-1142
615-532-9410 (Fax)
Barbara.Bowling@state.tn.us (E-mail)

AFFIDAVIT

IN THE MATTER OF:

Pickney Brothers, Inc.
7638 River Road
Nashville, Tennessee 37209

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Barbara Bowling, after being duly sworn, deposes and says:

I, Barbara Bowling, as Executive Director of the State Board of Architectural and Engineering Examiners, have made a complete and accurate search of the records and find that **Pickney Brothers, Inc.**, has not filed a firm disclosure form. This is required by *Tennessee Code Annotated*, Sections 62-2-601 and 62-2-602, for authorization to practice or offer to practice architecture, engineering, or landscape architecture in the State of Tennessee.

This search took place in the office of the State Board of Architectural and Engineering Examiners located on the 3rd Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243-1142 on October 12, 2004.

Barbara Bowling
AFFIANT

Sworn to and subscribed before me this 12th Day of October 2004

John A. Colthron
NOTARY PUBLIC

My Commission Expires July 30, 2005

FOR CLAY ESTATES SUBDIVISION" to be used as a reference document for drafting the proposed agreement. The document referred to Mr. Pickney's company as a "Utility."

6. The parties to the proposed agreement had not yet been determined by the end of the meeting. Mr. Pickney presented to me a business card carrying the business name Tennessee Wastewater, a business name without designation as to the nature of the entity, i.e. "Inc." or "LLC." When I pointed this out to Mr. Pickney he announced that the entity was a Tennessee corporation. At the time the other party to the agreement was also not confirmed since John Powell intended to form a separate legal entity to be party to the agreement. I recommended that the name "ABC, LLC" be used temporarily in the draft of the proposed agreement until Mr. Powell could form a separate Tennessee entity.

7. On April 12, 2004 I began drafting a proposed agreement between Mr. Pickney's company, Tennessee Wastewater Systems, Inc., and an entity to be formed by John Powell.

8. On April 13, 2004 I emailed to John Powell a draft of the proposed agreement between Tennessee Wastewater Systems, Inc. and ABC, LLC, a fictitious entity. and as of the date of this affidavit I have not made any changes to the draft agreement.

9. On October 20, 2004, John Powell presented me with a document titled "SEWER CONTRACT FOR MEADOWBROOK SUBDIVISION," a document apparently alleged by Mr. Pickney to be an enforceable agreement. The document is attached to this affidavit. The alleged agreement includes among its parties Onsite Systems, Inc. and Onsite Capacity Development Company, respectively characterized as a "Utility" and as a "Contractor."

10. On October 20, 2004, John Powell presented me with two executed statements from the Board For Licensing Contractors, Department of Commerce, State of Tennessee. The two statements are attached to this affidavit. One statement attests that as of September 7, 2004, On Site Systems Inc. and Tennessee Wastewater Systems Inc were not licensed contractors within the State of Tennessee. A second statement attests that as of September 1, 2004, Onsite Capacity Development Company was not a licensed contractor within the State of Tennessee

11. Title 62, Chapter 6, Part 1, Section 2 of the Tennessee Code Annotated, as amended to Section 62-6-136(a), states that "It is unlawful for any person, firm, or corporation to represent itself as a licensed contractor, or to act in the capacity of a contractor.. while not licensed...."

12. It is the Affiant's opinion that, presuming Onsite Systems, Inc. and Onsite Capacity Development Company (and Tennessee Wastewater Systems, Inc.) were not licensed contractors in Tennessee, and given that conducting business as a contractor without being licensed is illegal in Tennessee, any alleged agreement executed by Onsite Systems, Inc., Onsite Capacity Development Company, or Tennessee Wastewater Systems, Inc. are voidable by an aggrieved party to the agreement.

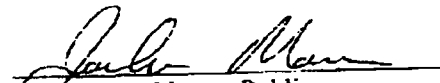
FURTHER YOUR AFFIANT SAYETH NOT.


Nicholas M. Romer, Affiant

I HEREBY CERTIFY THAT ON THIS DAY, before me, an officer duly authorized in Tennessee and in Williamson County to take acknowledgments, personally appeared, and having first been duly sworn, Nicholas M. Romer, to me known to be the person described in and who executed the foregoing Affidavit, and he acknowledged before me that he executed the same and has sworn to its contents

WITNESS MY HAND AND OFFICIAL SEAL in Williamson County, Tennessee this
21 day of October, 2004.

My commission expires: Oct 21, 2007


Notary Public

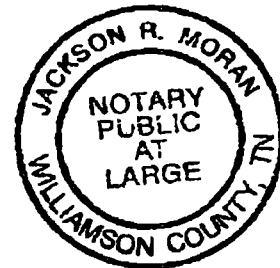


Exhibit Three
2 PAGES

**ESTIMATE OF COSTS FOR THE SEWER SYSTEM
FOR KINGS CHAPEL SUBDIVISION WITH A
CAPACITY OF 64,500 GAL/DAY
(215 Lots)**

ENGINEERING:

DDR \$ 30,000

DESIGN – Sand Gravel Treatment System,
Drip Field and Holding Pond \$ 80,000

DESIGN REVIEW FEE – Pay to Utility (15%) \$ 16,500

CONSTRUCTION:

SAND FILTER AND DRIP FIELD SYSTEM \$638,000
(John Powell's estimate)

CONSTRUCTION INSPECTION FEE –
Sand Filter and Drip Field System -
Pay to Utility (15%) \$ 95,700

CONSTRUCTION OF PUMP STATION AND
FORCE MAIN LINES \$ 30,000

CONSTRUCTION OF HOLDING POND \$ 50,000

1st Phase
82,000
16,500
98,500
17,000
115,500
40,000
353,775

Utility 16,500
95,700
12,000
121,575
40,000
285,775

Design 30,000
80,000
120,000

**INSPECTION FEES FOR PUMP STATION,
FORCE MAIN AND HOLDING POND
Pay to Utility - (15%)**

\$ 12,000

**INSPECTION FEE FOR CONSTRUCTION OF COLLECTION
LINES AND SYSTEMS ON THE LOTS, ASSUMING GRAVITY TANKS
AT HOMES WITH MODERATE SERVICE LINES LENGTHS**

COLLECTION SYSTEM COSTS \$273,000

ON LOT CONSTRUCTION COSTS \$537,500
[\$2,500/home x 215 homes = \$537,500]

TOTAL CONSTRUCTION COSTS \$810,500

INSPECTION FEE - Pay to Utility - (15%)

\$121,575

PROJECT MANAGEMENT

**Coordinate design and construction activities
insuring compliance with Williamson County
Planning Commission Regulations, Williamson
County Water and Wastewater Authority
Regulations, State of Tennessee Department of
Environment guidelines and Tennessee
Wastewater Systems specifications.**

\$ 40,000

TOTAL COST:

\$1,113,775

*Total inspection & Design fees 395,775 on
a 400,000 wastewater system!*

Exhibit 6

STEPS REQUIRED PRIOR TO PLAT SIGNING

1. Execution of contract with Tennessee Wastewater Systems and On-Site Capacity Development Company.
2. Pay On-Site Capacity Development Company the balance remaining on the contract.
3. Either complete construction of Phase I collection lines or bond the construction cost (\$239,894)
4. Pay On-Site Capacity Development Company per lot fee for 48 lots .

By signatures below, the parties agree that the above steps have been reviewed on this _____ day of July, 2004.

John Powell

Charles Pickney, Jr.

Pickney Correspondence Exhibit #6

Notes and Relevant facts disputing the existence of a contract within this Exhibit.

Please review attached Exhibit 2 this document was hand delivered by Charles Pickney, Jr. to John Powell and his wife Elaine in late July 2004 it is entitled **"Steps Required Prior To Plat Signing"**

1. Execution of contract with Tennessee Wastewater Systems and On-site Capacity Development Company
2. Pay On-Site Capacity Development Company the Balance Remaining on the Contract.
3. Either complete construction of Phase 1 collection lines or bond the construction cost of (\$239,894)
4. Pay On-Site Capacity Development Company per lot fee for 48 lots.

In step 1, above, we ask, If Charles Pickney Jr., President of Tennessee Wastewater Inc and a member of Onsite Capacity Development had a contract why did they need another to be executed.

His only logical answer is he had none or the one he had was no good. The truth is he had none.

In step 2, above, why does he not give an amount if there is a balance remaining on an existing contract? He cannot because he knows there is no contract. All he knows is he wants a contract and more money before he will sign a final plat.

In step 3, above, he has a dollar amount (\$239,894) for what construction on collection system of Phase 1 should cost. No other amounts are stated because there is no contract. The words "Either complete construction" He is telling us to complete construction. It would be unlawful for us to do so. Because Tennessee Wastewater FKA: Onsite Systems Inc. is the holder of the TDEC SOP permit.

Tennessee Code
CHAPTER 3 WATER POLLUTION CONTROL
PART 1 — WATER QUALITY CONTROL ACT

(condensed for easy review)

69-3-108. Permits.

(a) **Every person** who is or is planning to carry on any of the activities outlined in subsection (b),, **shall file an application for a permit** with the commissioner or, when necessary, for modification of such person's existing permit.

(b) **It is unlawful for any person,,** to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(2) **The construction, installation,** modification, or operation of any treatment works, or **part thereof,** or **any extension** or **addition** thereto;

The above law may be interpreted that it is unlawful for anyone to construct or install other than the holder of the permit. It might be allowed that only the permit holder could contract with a state licensed sewer contractor for the construction and installation, but certainly, it would be unlawful for any other person to do so. The law pertaining to the issuance of the permit is clear it wants the permit holder to be responsible for the construction and installation of the entire sewer system.

If Charles Pickney, Jr. and Tennessee Wastewater, Inc. and Onsite Capacity Development Inc had a contract in October of 2003 why would Charles Pickney delivery this document to us in July of 2004.

As Charles Pickney, Jr. signature appears on the bottom of the page on the document "Steps Required Prior to Plat Signing" these facts can be surmised.

1. The Public Utility is the entity that needs to sign the final plat. Tennessee Wastewater Inc. FKA Onsite Systems Inc. is that Utility that has demanded the steps be completed prior to signing the final plat.

2. Charles Pickney, Jr. is the president of Tennessee Wastewater Inc. and its only employee it would be logical for him to have drafted and for him to sign this document.

Exhibit 7A

Original Contract

Presented with OCDC Professional Service Agreement

June 10, 2003

Total Consideration

DDR		\$30,000
Per lot fees	215 x \$6,000 =	<u>1,290,000</u>
	Total	1,320,000

Utility Company is responsible for all bonding costs

Payment Terms

DDR – 15,000 – due at signing

15,000 – due when report is approved by Williamson County Planning Commission

No Phasing

Half of tap fees are due at contract signing. \$660,000

Half of tap fees are due when the state of Tennessee approves the construction of the treatment and disposal system \$660,000

If Developer phases payments

Minimum – 50% total due at signing = \$645,000

After the 107½th Lot is platted \$6,000 per lot will be due at plat signing for all remaining lots plus ½% per month additional charge for each month that has passed between contract signing and the lots being platted

If original contract is used and signed immediately

OCDC has agreed that any payment toward the \$30,000 fee for the DDR will be used to reduce the amount due at signing and the overall amount due will be reduced by the \$30,000 (DDR fee waived)

Amount due at signing $(\frac{1}{2}) \times (\$1,290,000) = \$660,000$

Less payments previously made

15,000 – for DDR

250,000 – for construction progress payment

265,000 – total payments credited

Balance due \$395,000

Additional payments of \$660,000 plus any applicable interest will be made per the contract, as future phases are platted.

Exhibit 7B

October 31st Optional Contract

Contract offered October 31, 2003

Developer will be responsible for all bonding costs

No payment is due at contract signing

Developer will pay \$600,000 during construction of sand filter and drip irrigation systems with progress payments being made as construction is completed

The amount due at completion of construction is \$600,000

Developer will make additional payments of \$1,850 per lot before each phase is platted

Future payments

$$\$215 \times 1,850 = \$397,750$$

$$\text{Total Payment} = \$997,750$$

If October 31st contract is signed immediately

OCDC has agreed that any payment toward the \$30,000 fee for the DDR will be used to reduce the amount due at signing (DDR fee waived)

Construction of sand filter and drip irrigation system is complete – construction of the storage pond remains to be done. The amount to be paid for completed construction is \$550,000.

Amount to be paid for remaining work \$50,000

The amount currently due on completed construction $\$550,000 - (250,000 + 15,000)$
 $550,000 - 265,000 = \$285,000$

Developer will pay \$1,850 per lot before each phase is recorded

Future Payments

\$50,000 when the storage pond construction is complete

$$\$215 \times \$1,850 \text{ per lot} = \$397,750$$

$$\text{Total payment} = \$997,750$$

7
Pickney Correspondence Exhibit 3 A & B

Notes and relevant facts disputing the existence of a contract within these Exhibits.

In June of 2004 Charles Pickney, Jr. presented John Powell with two typed contract options Exhibit Three A ("Original Contract") and Exhibit 3, B ("October 31st Optional Contract").

Dates and Times are important here, Charles Pickney Jr. has given to various State Agencies a copy of what he says is the contract (Exhibit 1) that exists between the parties. This document has several dates on it, it was made and entered into on November 3rd 2003. However, Robert Pickney signed it on 10-03-03 a month before it existed. If this Exhibit 1 is real and valid and made and entered into in November 2003 but signed in October of 2003. Why is Charles Pickney Jr. now in June of 2004 giving John Powell two options of contracts that predate Exhibit 1. If there was a contract in existence why the need for the two contract options in June of 2004, if this contract was in existence why was it not a contract option offered to John Powell in June of 2004. Additionally the terms of the of the two contract options in June of 2004 do not match the terms of Exhibit 1.

The truth is Charles Pickney Jr. knew there was no contract that is why he gave John Powell two contract options (Exhibit 3, A & B) in June of 2004. The titles of the Exhibits themselves indicates Original or Optional in June of 2004 Charles Pickney Jr. was giving Mr. Powell a choice of which contract he wanted.

Proving that no contract existed within Exhibit 3 A, "Original Contract", please review the following.

"half of tap fees are due at contract signing: \$660,000"

If a contract was signed they would have had collected consideration of \$660,000.

"If original contract is used and signed immediately:"

This proves that a contract was not signed at the time this was presented to Mr. Powell in June of 2004.

"Less payments previously made:"

<u>15,000 – for DDR</u>
<u>250,000 – for construction progress payment</u>
<u>265,000 – total payments credited</u>

As the above mentioned payment of Two Hundred Fifty Thousand was paid on **January 6, 2004**, (Please See Exhibit Five) to On Site Capacity this proves that this Exhibit 3 A was drafted **after** January 6th 2004. Charles Pickney Jr. has tender Exhibit 1 to State agencies as the contract. Why does he incorporate the \$250,000 dollar January 04 payment into the Original Contract if a contract existed in November of the preceding year?

"250,000 - for construction progress payment"

Charles Pickney Jr. is correct in the statement above the \$250,000 was for construction progress. Robert Pickney and Charles Pickney Jr. both understood that was a verbal commitment I had made to them to pay the \$250,000 and they also understood that no other funds would be paid to them until we received a contract. If it had been paid pursuant to a contract he would have said so in this Exhibit 3 A instead of construction progress payment.

Proving that no contract existed within Exhibit 3, B, "October 31st Optional Contract", please review the following.

"Contract offered October 31st 2003"

Says a Contract was offered October 31st 2003, if this is true why was a different contract offered after Robert Pickney had signed one on October 4th of that year. If a contract was signed why would one be offered. Just the fact that the word offered is used in June of 2004 proves that no contract had ever been entered into.

"If October 31st contract is signed immediately:"

Why, again, would this contract need to be signed immediately in June of 2004 if one, Exhibit 1, had already been executed?

"The amount currently due on completed construction: \$550,000 - (250,000 + 15,000)"

Here again we see a payment referenced that was made payable to On Site Capacity (Exhibit 5) by check on January 6th 2004. This again proves that there was not a contract in existence before January 6th of 2004. Exhibit One that Charles Pickney has presented as the contract between parties was signed in October & November of 2003.